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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 513.

THE UNITED STATES, PLAINTIFF,

vs.

DAVID WADDELL, SAMUEL McDANIEL, JAMES HOLLAND, R. M. EVANS, JOEL HUBBARD, AND BENJAMIN F. PALMER.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED MAY 26, 1883.

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1 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one thousand eight hundred and eighty-three, at the United States court-room, in the city of Little Rock, Arkansas, the honorable Geo. W. McCrary, circuit judge 8th judicial district; Hon. Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit: on April 19, 1883:

THE UNITED STATES *vs.* DAVID WADDELL, SAMUEL MCDANIEL, JAMES Holland, R. M. Evans, Joel Hubbard, and Benjamin F. Palmer.	959.

Be it remembered that on the 9th day of April, 1883, there was filed in the circuit court of the United States by the leave of said court by Charles C. Waters, United States district attorney for the eastern district of Arkansas, a criminal information in the above entitled cause in the words and figures following to wit:

In the circuit court of the United States for the eastern district of Arkansas.

UNITED STATES *vs.* DAVID WADDELL, SAMUEL MCDANIEL, JAMES Holland, R. M. Evans, Joel Hubbard, and Benjamin F. Palmer.	Section 5508 R. S.

Comes Charles C. Waters, esq., district attorney for the eastern
2 district of Arkansas, in the circuit court of the United States for the said district, before honorable George W. McCrary and Henry C. Caldwell, judges of said court, and for the United States gives the court here to understand and be informed—

FIRST COUNT. That Burrell Lindsey, a citizen of the United States of America, on the 30th day of December, 1882, at the United States land office in Little Rock, Arkansas, made homestead entry of the following described tract of land, belonging to the United States, in the county of Van Buren and eastern district of Arkansas, to wit: The southwest fr'l quarter of Section twenty-six, of Township nine north, Range thirteen west, and that thereafter on the 10th day of January, 1883, the said Burrill Lindsey, citizen of the United States aforesaid, was residing
3 upon and cultivating said tract of land as aforesaid for the purpose of perfecting his right to the same under the laws of the United States as a homestead, in good faith, his right to a patent from the United States to said lands not having yet accrued. And the said David Waddell, Samuel McDaniel, James Holland, R. M. Evans, Joel Hubbard, and Ben-

jamin F. Palmer, being persons of evil minds and dispositions, together with divers ev[illegible] disposed persons whose names are to the said United States attorney unknown, on the said 10th day of January, 1883, at the eastern district of Arkansas, did conspire to injure, oppress, threaten, and intimidate the said Burrell Lindsey, citizen of the United States as aforesaid, in the free exercise and enjoyment of certain rights and privi-
4 leges secured to him by the Constitution and laws of the United States, and because of his having exercised the same, to wit, the right and privilege to make said homestead entry on lands of the United States as aforesaid, and the right and privilege to reside upon, cultivate, and improve said homestead entry, and the right to maintain title in himself to said homestead entry, said rights and privileges being duly conferred upon him, the said Burrell Lindsey, citizen of the United States as aforesaid, by the Constitution and laws of the United States, and in particular by sections 2289, 2290, 2291 Revised Statutes of the United States, and other laws of Congress as to homestead entries, and by his individual act in compliance therewith and in pursuance thereof, contrary to the
5 form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT. And the said United States further informs the court that Burrell Lindsey, a citizen of the United States of America, on the 30th day of December, 1882, at the United States land office in Little Rock, Arkansas, made homestead entry of the following described tract of land belonging to the United States in the county of Van Buren and eastern district of Arkansas, to wit: The southwest fr'l quarter of Section twenty-six, Township nine north, Range thirteen west, and that thereafter on the 10th day of January, 1883, the said Burrell Lindsey, citizen of the United States as aforesaid, was residing upon and cultivating said
6 tract of land as a *as a* homesteader in good faith, his rights to a patent from the United States to said land not yet having accrued. And that David Waddell, Samuel McDaniel, James Holland, R. M. Evans, Joel Hubbard, and Benjamin F. Palmer, being persons of evil minds and dispositions, together with divers other evil disposed persons, whose names are to the said United States attorney unknown, on the said 10th day of January, 1883, at the eastern district of Arkansas, did conspire to injure, oppress, threaten, and intimidate the said Burrell Lindsey, citizen of the United States as aforesaid, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States; and because of his having exercised the same, to
7 wit, the right and privilege to make said homestead entry on lands of the United States as aforesaid, and right and privilege to reside upon and cultivate and improve said homestead entry, and the right to mature title in himself to said homestead entry, said rights and privileges being duly conferred upon him, the said Burrill Lindsey, citizen of the United States as aforesaid, by the Constitution and laws of the United States, and in particular by sections 2289, 2290, 2291 Revised Statutes of the United States and other laws of Congress as to homestead entries, and by his individual acts in compliance therewith and in pursuance thereof. And that said defendants in execution of said last-mentioned premises and in pursuance of the said conspiracy, combination, and agreement between and

amongst them as aforesaid, afterwards, to wit, on the said 10th day of January, 1883, at the eastern district of Arkansas, and upon the said
8 homestead entry of said Burrill Lindsey, did with force and arms fire off loaded guns and pistols into the cabin of said Burrell Lindsey, and did then and there drive the said Burrill Lindsey from his home on said homestead entry, which had been provided him by the United States of America, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT. And the said United States attorney further informs the court that Burrell Lindsey, a citizen of the United States of America, on the 30th day of December, 1882, at the United States land office in Little Rock, Arkansas, made homestead entry of the following described tract of land belonging to the United States, in the county of Van
9 Buren, and eastern district of Arkansas, to wit, the Southwest fr'l quarter of Section twenty-six, of Township nine North Range thirteen West, and that thereafter, on the 10th day of January, 1883, the said Burrell Lindsey, citizen of the United States as aforesaid, was residing upon and cultivating said tract of land as aforesaid for the purpose of effecting and acquiring a right and title thereto under the laws of the United States, as a homesteader, in good faith, his right to a patent from the United States to said land not then having accrued. And that David Waddell, Samuel McDaniel, James Holland, R. M. Evans, Joel Hubbard, and Benjamin F. Palmer, being persons of evil minds and dispo-
10 sitions, together with divers evil disposed persons whose names are to the said United States attorney unknown, on the said 10th day of January, 1883, at the eastern district of Arkansas, did go in disguise on the premises of the said Burrell Lindsey, citizen of the United States as aforesaid, to wit, upon the tract of land so occupied by him as a homestead entry as aforesaid, being land of the United States as aforesaid, with intent to prevent and hinder the free exercise and enjoyment by him the said Burrell Lindsey, of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit, the right and privilege to make said homestead entry on lands of the United States as aforesaid, and the right and privilege to reside upon, cultivate, and
11 improve said homestead entry, and the right to mature title in himself to said homestead entry, said rights and privileges being duly conferred him, the said Burrill Lindsey, citizen of the United States as aforesaid by the Constitution and laws of the United States, and in particular by sections 2289, 2290, 2291, Revised Statutes of the United States and other laws of Congress as to homestead entries, and by his individual acts in compliance therewith, and in pursuance thereof contrary to the form of the statutes in such case made and provided, and against the peace and dignity of the United States of America.

CHARLES C. WATERS,
United States Attorney, Eastern District of Arkansas.

(Endorsed:) Filed April 9, 1883. Ralph L. Goodrich, clerk. By W. P. Feild, d. c.

12 And afterwards, on the 10th day of April, 1883, the said defendants named in said information appeared in court by Joseph W. Martin, their attorney, and filed a demurrer to said information in the words and figures following, to wit:

In the circuit court for eastern district of the State of Arkansas.

UNTED STATES
vs. } No. 959.
DAVID WADDELL, *et als.*

Come the defendants, by their attorney, and demur to the information herein filed against them, and for cause thereof say—

1st. The matters and things alleged therein do not constitute any offence against the laws or sovereignty of the United States.

2nd. Said information does not allege any offence of which this court has jurisdiction.

13 3rd. Because said section 5508, so for as it may attempt to impose penalties and inflict punishment for the lawlessness and violence set forth in said information, is in violation of the Constitution of the United States and void.

4th. And because said information is in other respects informal, is insufficient, and defective.

Wherefore said defendants pray judgment of said information, and that the same may be quashed, &c.

JOSEPH W. MARTIN,
Att'y for def'ts.

(Endorsed:) Filed April 10, 1883. Ralph L. Goodrich, clerk.

And afterwards the said demurrer to said information came on for argument, and it was argued before the court, the Hon. George W. McCrary, circuit judge, and the Hon. Henry C. Caldwell, district judge, presid-

14 ing and holding said court, whereupon upon consideration of said demurrer the said judges were divided in opinion upon the following questions:

First. Whether section 5508 of the Revised Statutes of the United States is a constitutional and valid law.

Second. Whether the information in said cause charged any offence under said section 5508 of the Revised Statutes of the United States, or against any statute of the United States.

Third. Whether the demurrer to said information was well taken and should be sustained.

And thereupon the said defendants by their said attorney, Joseph W. Martin, requested that the said questions upon which our said judges are divided in opinions might be stated under the directions of the said

15 judges and certified under the seal of the court to the Supreme Court at the next term.

Whereupon it is ordered that the questions aforesaid upon which the judges are divided in opinion, and which were framed and stated under the direction of the judges, are hereby certified to the Supreme Court of the United States for its decision thereon, and it appearing that further proceedings cannot be had in said cause without prejudice to the merits, it is

furthered ordered that said cause be continued until the decision of said Supreme Court in the premises.

Stated and signed by the judges at the same term, this 18th day of April, 1883.

GEO. W. McCRARY,
Circuit Judge.

HENRY C. CALDWELL,
District Judge.

16 UNITED STATES OF AMERICA,
Eastern District of Arkansas.

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writing annexed to this certificate is a true, correct, and compared copy of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court, this 19th day of May, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and seventh.

Attest:

[SEAL.] RALPH L. GOODRICH, *Clerk.*

(Indorsement on cover:) No. 513. The United States, plaintiff, vs. David Waddell, Samuel McDaniel, James Holland, R. M. Evans, Joel Hubbard, and Benjamin F. Palmer. E. Arkansas C. C. U. S. Filed 26th May, 1883.

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